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Attorneys for Plaintiffs,

Erik Knutson and Kevin Lemieux

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**ERIK KNUTSON and KEVIN
LEMIEUX, Individually and On
Behalf of All Others Similarly
Situating,**

Plaintiffs,

v.

**SCHWAN'S HOME SERVICE,
INC.; and CUSTOMER ELATION,
INC.,**

Defendants.

Case No.: 12-CV-00964-GPC (DHB)

**DECLARATION OF KEVIN
LEMIEUX IN SUPPORT OF
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT**

1 **I, Kevin Lemieux, declare:**

- 2
- 3 1. I am one of the named Plaintiffs in this above-captioned class action against
- 4 Schwan's Home Service, Inc. ("Schwan's," or jointly the "Defendants") and
- 5 Customer Elation, Inc., ("Customer Elation," or jointly the "Defendants").
- 6 If called as a witness, I would competently testify to the matters herein from
- 7 personal knowledge. I am filing this declaration in support of Plaintiffs'
- 8 Motion For Preliminary Approval of Class Action Settlement and
- 9 Certification of Settlement Class.
- 10 2. I, through my counsel, commenced this action on July 19, 2012 against
- 11 Schwan's by filing a putative class action complaint asserting causes of
- 12 action for: (1) negligent violation of Section 227(b)(3)(B) of the Telephone
- 13 Consumer Protection Act ("TCPA"), codified at 47 U.S.C. § 227 et seq., and
- 14 (2) willful violation of Section 227(b)(3)(B) of the TCPA (the "Complaint").
- 15 3. I, through my counsel, filed a First Amended Complaint in this action on
- 16 December 4, 2012; and on February 20, 2013, I, through my counsel, filed a
- 17 Second Amended Complaint to add Customer Elation as a defendant.
- 18 4. I, as a named Plaintiff in this action, have agreed to a class Settlement with
- 19 Defendants. I have reviewed the Settlement Agreement and have discussed
- 20 the settlement with my counsel. I believe the settlement is fair and
- 21 reasonable, taking into account the sharply contested issues, as well as the
- 22 risks, uncertainty, and costs of further litigation. I request the Court to
- 23 approve the Settlement.
- 24 5. It is my opinion that I have, and will continue to adequately, represent the
- 25 interests of the putative class, and that I have retained experienced counsel.
- 26 6. I have participated throughout this litigation with the belief that I was
- 27 helping all other persons similarly situated to me. I understand the
- 28

obligations of serving as a Class Representative. I request that I continue to serve as Class Representative.

7. I met with my attorneys for the initial consultation, participated in calls regarding fact-finding efforts with my attorneys, held in person meetings with my attorneys, appeared for my deposition, made myself available telephonically for the Early Neutral Evaluation Conference, made myself available telephonically during the formal mediations which followed, submitted a declaration in support of class certification, took time off from work in anticipation of attending the class certification hearing that I planned on attending (which hearing was taken off calendar the date before the hearing), and reviewed and signed off on all pertinent motions and now submit this declaration in support of preliminary approval.
8. I understand that my attorneys have requested that I, as a Class Representative, be awarded an incentive payment of up to a total of \$1,500 to be paid from the settlement fund, which is created on behalf of the class that I represent. I understand that any such award has to be approved by the Court.
9. I am unaware of any legal differences in my status as a class member from the other class members in this case. I am also unaware of any unique factual issues pertaining to such representative status that must be litigated. To my knowledge, I have no conflict with the other class members.
10. The claims that I have asserted in the Second Amended Complaint seem to me to be the same as the claims of the other class members, and my claims relate to the same issue of law and fact as the other class claims.

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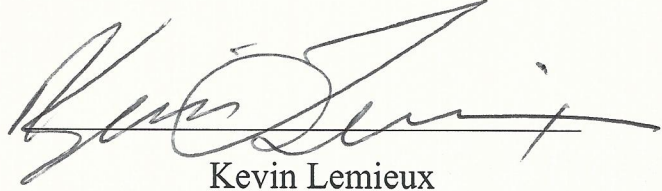
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1 11.I believe that the proposed Settlement satisfies all criteria for preliminary
2 approval.

3 I declare under penalty of perjury that the foregoing is true and correct.
4 Executed on May 1, 2014, in San Diego, California, pursuant to the laws of
5 California and the United States.

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Kevin Lemieux